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May 31, 2019

VIA ECF

The Honorable Vince Chhabria  
U.S. District Judge  
U.S. District Court for the Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

Re: *In re: Facebook, Inc. Consumer Privacy User Profile Litig.*, No. 18-MD-2843-VC

Dear Judge Chhabria:

Pursuant to the Court's request during the May 29, 2019 hearing, we respectfully submit below a list of cases in support of Facebook's position that Facebook users are contractually bound by updated versions of the terms of service.

- *Tompkins v. 23andMe, Inc.*, 840 F.3d 1016, 1032–33 (9th Cir. 2016)
- *Ali v. J.P. Morgan Chase Bank, N.A.*, 647 F. App'x 783, 786 (9th Cir. 2016)
- *Campos v. JPMorgan Chase Bank*, 2019 WL 827634, at \*10 (N.D. Cal. Feb. 21, 2019)
- *DeVries v. Experian Info. Sols, Inc.*, 2017 WL 733096, at \*7 (N.D. Cal. Feb. 24, 2017)
- *Matera v. Google Inc.*, 2016 WL 5339806, at \*17 (N.D. Cal. Sept. 23, 2016)
- *In re Facebook Biometric Info. Privacy Litig.*, 185 F. Supp. 3d 1155, 1167 (N.D. Cal. 2016)
- *Crawford v. Beachbody, LLC*, 2014 WL 6606563, at \*6 (S.D. Cal. Nov. 5, 2014)
- *Facebook, Inc. v. Profile Tech., Ltd.*, 2013 WL 3815886, at \*3 (N.D. Cal. July 22, 2013)
- *Perdue v. Crocker Nat'l Bank*, 38 Cal. 3d 913, 924 (1985)

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- *Casas v. Carmax Auto Superstores Cal. LLC*, 224 Cal. App. 4th 1223, 1237 (2014)
- *Serpa v. Cal. Sur. Investigations, Inc.*, 215 Cal. App. 4th 695, 706 (2013)

During the May 29 hearing, Plaintiffs said that they would also identify for the Court the paragraphs in the current complaint that they contend contain allegations that Facebook shared data in excess of users' privacy or application settings. In anticipation of that proffer, Facebook respectfully directs the Court to the following paragraphs of Plaintiffs' complaints, where Plaintiffs admit that Facebook respected users' privacy settings and shared data only in a manner consistent with their privacy and application settings:

- Corrected Consol. Compl. (ECF No. 152-2): ¶¶ 117, 121, 122, 123.
- First Am. Consol. Compl. (ECF No. 257): ¶¶ 400, 408, 409, 411, 412, 414

Respectfully,

GIBSON, DUNN & CRUTCHER LLP

/s/ Orin Snyder

Orin Snyder